and that there was a real possibility that the defendants might put the said tapes out of the reach of the plaintiffs if they got wind of any application for an injunction. The application was therefore rightly made *ex parte* so as not to give any chance to the defendants to erase the films in the video tapes or hide away the tapes before the plaintiffs could lay hands on them in enforcing in injunction.

I do not think there is any merit in the contentions advanced by the defendants in the application to set aside the injunction except on one important point which they have raised on the question of the publication of the films in the video tapes under the Copyright Act 1969 taken in conjunction with the Films (Censorship) Act 1952.

The Films (Censorship) Act 1952 provides for the censorship of films and these include cinematograph films and video tapes. The owners of local and foreign films are required to comply with the provisions of the Films (Censorship) Act and obtain the necessary certificates of approval from the Board of Film Censors established under the Act before any film is exhibited in Malaysia. It is an offence punishable with a fine not exceeding $10,000 to exhibit, sell, hire or distribute any film in respect of which the requisite certificate has not been issued by the Board. The mere possession of such a film without lawful excuse is also punishable with the maximum fine of $10,000.

To be conferred with copyright on foreign work which is eligible for copyright such as a literary, musical or artistic work or cinematograph film there must be a first publication thereof in Malaysia. And if the publication in Malaysia takes place within thirty days of an earlier publication elsewhere it is treated as the first publication. But the publication here in Malaysia must be a lawful publication. When the cinematograph films contained in the video tapes in the present case were published in Malaysia within thirty days of their publication in Hongkong no certificate of approval had been issued in respect of the films by the Board of Film Censors. In the absence of such certificate there was no valid publication of the films within the provisions of the Copyright Act.

The publication of the films in the video tapes by the plaintiffs was unlawful, illegal and constituted an offence punishable under the Film (Censorship) Act. The plaintiffs having blatantly contravened the censorship laws of Malaysia show no qualms whatsoever in now seeking redress for infringement of something which is tainted with illegality. This is a wholly unmitigating stance adopted by the plaintiffs which cannot be sustained or condoned. As a matter of public policy the publication of a film ought not to be held valid within the meaning of the relevant provisions of the Copyright Act unless the film is first approved by the Board of Film Censors. Public interest requires that the public at large do not gain access to immoral, subversive or undesirable films and it is for this purpose that all films are subject to censorship before they are released for public viewing.

In my judgment therefore and for the reason I have stated the cinematograph films contained in the video tapes in this case belonging to the plaintiffs have no copyright. The plaintiffs are thus in no position to maintain any action for infringement of copyright in respect of these films. The interim injunction is set aside and the 84 tapes and the 24 record cards are to be returned to the defendants forthwith.

Interim injunction set aside.

Solicitors: *Shearn Delamore & Co.; Azman, Davidson & Co.*

TAN AH BAH & 32 ORS. v. PUBLIC PROSECUTOR

[O.Cr. J. (Gunn Chit Tuan J.) August 22, 1983]

[Penang – Criminal Revision No. 19 of 1983]

Gaming – "Blangkas", game of chance – Police raid on premises – Forfeiture of $8,850.00 found in players' possession – Order of forfeiture set aside – No evidence to show said money had been used for purpose of playing "blangkas" – Common Gaming Houses Ordinance 1953, ss. 7(2) & 16(2).

Criminal Law & Procedure – Gaming – "Blangkas", game of chance – Police raid on premises – Forfeiture of money found in players' possession – Magistrate had no power to make order of forfeiture – Evidence must show money used for purpose of playing "blangkas".

On February 18, 1982 the police raided the premises behind No. 89 Jawi Village where about 60 persons were found playing "blangkas", a game of chance. While fleeing from the police, they were seen collecting money on a table. 33 persons were apprehended and later charged in court. A sum of $187.00 found on the table and various

appliances used for playing "blangkas" were seized. The police also recovered a total sum of $8,850.00 cash found after examination of the 33 persons. All the 33 persons pleaded guilty and having been convicted under section 7(2) of the Common Gaming Houses Ordinance, 1953 were each fined a sum of $200.00 in default 20 days jail. The said sum of $8,850.00 was also ordered to be forfeited by the learned Magistrate. One of the 33 persons arrested was Tan Ah Bah who wrote a letter to the Judge, High Court on May 14, 1982 appealing for the return of the cash which was taken from him and the others.

Held: (1) the learned magistrate had no power to make an order for the forfeiture of the said sum of $8,850.00 under section 16(2) of the said Ordinance as that section is restricted to the confiscation of gaming instruments, appliances, money, etc. found in a common gaming house "or on any persons found therein or escaping therefrom and which the Magistrate is of opinion were used or intended to be used for any game or lottery ..." It is only in relation to common gaming houses and where a search warrant has been issued in accordance with the provisions of section 16(1) of the Ordinance that the Magistrate is entitled to exercise his powers of forfeiture;

(2) in this case there was no evidence to show that the said sum of money had been used in or for the purpose of playing the game of "blangkas" and could not therefore be declared by the lower court to be forfeited to the government.

Cases referred to:

(1) *Teoh Ah Pow* v. *Public Prosecutor* [1961] M.L.J. 81, 82.

(2) *Hoo Kung Hock* v. *Public Prosecutor* [1941] M.L.J. 26.

CRIMINAL REVISION.

No counsel engaged by applicants.

22 of them in person.

Nordin bin Haji Sulaiman (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Gunn Chit Tuan J.: On February 18, 1982 at about 7.00 p.m. A.S.P. Lamack together with a police party, acting on information received, conducted a raid in an open space behind house No. 89, Jawi Village, Sungei Bakap. As the police party approached a shed they noticed about sixty persons, both male and female, playing a game of chance called "blangkas". The police party rushed towards the shed and all the persons therein started running out of it. Whilst fleeing from the police they were seen collecting money on a table. The police party was successful in apprehending 33 persons, both male and female, who were later charged in the magistrate's court at Sg. Jawi. A sum of $187.00 found on the table was also seized together with various appliances used for playing blangkas.

In addition to the various exhibits recovered by the police party, they also recovered a total sum of $8,850.00 cash found after examination of the 33 persons concerned. Each one of them was given a search list. All the 33 persons pleaded guilty and having been convicted under section 7(2) of the Common Gaming Houses Ordinance No. 6/53 were each fined a sum of $200.00 in default 20 days jail. The said sum of $8,850 was also ordered to be forfeited by the learned Magistrate after the prosecuting officer had drawn his attention to section 16(2) of the said Ordinance. One of the 33 persons arrested was Tan Ah Bah who wrote a letter addressed to the Judge, High Court, Penang dated May 14, 1982, appealing for the return of the cash which was taken from him and the others.

Having perused the records of this case I called Tan Ah Bah and the others as well as the learned Deputy Public Prosecutor to appear and address the court before I decided whether to exercise my powers of revision. Encik Nordin bin Haji Sulaiman, who appeared for the Public Prosecutor, submitted that the learned Magistrate who heard this case did not enquire whether the said sum of $8,850.00 was found on the persons concerned and suggested that I might consider directing an inquiry to be held for that purpose. However, I pointed out to the learned Deputy that it was not necessary to do so as the evidence recorded by the learned Magistrate clearly showed that the said sum of $8,850.00 was found after a search was made on the 33 persons concerned. The evidence that the said sum of $8,850.00 found in the possession, i.e. in the pockets, of those 33 persons did not establish that that sum of money was used for the commission of the offence of gaming under section 7(2) of the said Ordinance. It was also clear that the learned Magistrate had no power to make an order for the forfeiture of the said sum of $8,850.00 under section 16(2) of the said Ordinance as that section is restricted to the confiscation of gaming instruments, appliances, money, etc. found in a common gaming house "or on any persons found therein or escaping therefrom and which the Magistrate is of opinion were used or intended to be used for any game or lottery ..." As pointed by Rigby J. (as he then was) in *Teoh Ah Pow* v. *Public Prosecutor*[1] it is "only in relation to common gaming houses and where a search warrant has been issued in accordance with the provisions of section 16(1) of the Ordinance that the Magistrate is entitled to exercise his powers of forfeiture". Moreover the evidence in

this case shows that the said sum of $8,850.00 was found on those 33 persons but there is no evidence to show that the said sum of money had been used in or for the purpose of playing the game of "blangkas" and could not therefore be declared by the Court before which the conviction is had to be forfeited to the Government. (See *Teoh Ah Pow* v. *Public Prosecutor*(1) and *Hoo Kung Hock* v. *Public Prosecutor*(2)).

For these reasons, the order of forfeiture of the said sum of $8,850.00 must be set aside and I also ordered that the money be refunded to the persons from whom it was taken by the police.

Order of forfeiture set aside.

TAIB BIN AWANG v. MOHAMAD BIN ABDULLAH & ORS.

[O.C.J. (Eusoff Chin J.) June 18 & 19; & August 23, 1983]

[Kuala Trengganu – Civil Suit No. 94 of 1982]

Practice & Procedure – Claim for wrongful and malicious prosecution in Kadi's court – Case in Kadi's court under appeal – Action brought prematurely – Statement of Claim disclosed no reasonable cause of action and ordered to be struck out.

Tort – Malicious prosecution – Factors to be proved – Statement of Claim did not disclose prosecution ended in plaintiff's favour.

The plaintiff in this case claimed against the 3 defendants on the grounds that he had been wrongfully prosecuted in the Kadi's Court for an offence under the Administration of Islamic Law Enactment, Trengganu, 1955, section 149. The plaintiff was found guilty and was sentenced to 2 weeks' imprisonment. The case in the Kadi's court was still under appeal.

Held, dismissing the plaintiff's claim: (1) in an action for malicious prosecution it is essential for the plaintiff to aver and prove that the proceeding complained of, terminated in his favour;

(2) since the criminal proceedings against the plaintiff in the Kadi's court had not been finally determined by the Syariah Appeal Court in the plaintiff's favour, it was premature for the plaintiff to bring this action;

(3) the plaintiff's Statement of Claim disclosed no reasonable cause of action against the 3 defendants and ought to be struck off.

Cases referred to:

(1) *Everett* v. *Ribbands & Anor.* [1952] 2 Q.B. 198.

(2) *Bynoe* v. *Bank of England* [1902] 1 K.B. 467

(3) *Basebe* v. *Matthews and Wife* (1867) L.R. 2 C.P. 684.

CIVIL SUIT.

Wan Abdul Muttalib bin Embong for the plaintiff.

Abdul Aziz bin Mohamed (State Legal Adviser) for defendants.

Cur. Adv. Vult.

Eusoff Chin J.: The plaintiff claims damages against the three defendants on the grounds that he had been wrongfully and maliciously prosecuted in the Kadi's Court for an offence under section 149, Administration of Islamic Law Enactment, Trengganu, 1955 (hereinafter referred to as the Enactment). In the Kadi's Court, the plaintiff was charged vide K.T. Kes Jenayah No. 108/81 as follows:–

"Bahawa kamu Taib bin Awang K/P No. 1713960 pada 31.7.1981 antara jam 12.40 hingga 1.15 petang telah mengeji Pejabat Hal Ehwal Ugama Trengganu dengan bertindak sebagai Imam mendirikan Sembahyang Jumaat di Surau Pintu Gerbang Chendering, Kuala Trengganu sedangkan pada 2.5.1981 Pejabat Hal Ehwal Ugama Trengganu telah mengeluarkan satu surat sibaran Bil. (10) dalam PU.Tr.15/1/133, telah disibarkan kepada penduduk-penduduk Chendering dan satu salinan telah ditampalkan di Surau tersebut menegah siapa-siapa mendirikan Sembahyang Juma'at di Surau tersebut. Oleh yang demikian kamu ditudoh telah melakukan satu kesalahan di bawah fasal 149 Undang-Undang Pentadbiran Hukum Syarak Bil. 4/55 Trengganu dan boleh dihukum di bawah fasal yang sama."

The Statement of Claim, however, does not disclose whether or not the plaintiff was found guilty of the charge and if so what sentence was passed on him, or whether he was acquitted by the Kadi's Court. But in the course of argument, the plaintiff's counsel admitted that the plaintiff was found guilty and was sentenced to two weeks' imprisonment, and that the case in the Kadi's Court was still under appeal.

The first defendant, Mohamad bin Abdullah, is an investigating officer, and the second defendant is a prosecutor, both of the Religious Affairs Department Trengganu. The third defendant is the State Commissioner of that Department.

It is claimed by the plaintiff that the third defendant had issued a circular on 2.5.81 prohibiting the performance of Friday prayer at Surau